

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**UNITED STATES OF AMERICA,**

Plaintiff,

**HON. TERRENCE G. BERG**

v.

**No. 18-20641**

**TORIANO ADAMS,**

Defendant.

**SENTENCING**

**BEFORE U.S DISTRICT JUDGE TERRENCE G. BERG**

Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan

**Tuesday, October 5, 2021  
2:31 p.m.**

**APPEARANCES:**

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1	<b>TABLE OF CONTENTS</b>	
2	<u>Proceeding</u>	<u>Page</u>
3	<b>Sentencing</b>	3
4	Allocution by Mr. Swor	11
5	Allocution by Mr. Adams	21
6	Response by Mr. Particka	21
7	Ruling	28
8		
9		
10	<u>Exhibits:</u>	<u>Received</u>
11	(None offered.)	
12		
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16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

**SENTENCING**

October 5, 2021

Detroit, Michigan

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(Court, Counsel and Defendant present; 2:31 p.m.)

THE COURT CLERK: Please rise. United States District Court for the Eastern District of Michigan is now in session; the Honorable Terrence Berg presiding. You may be seated.

The Court now calls Case Number 18-20641, United States of America versus Defendant 1, Toriano Adams.

Counsel, please place your appearances on the record.

MR. PARTICKA: Good afternoon, Your Honor. Ryan Particka and Mark Chasteen on behalf of the United States.

THE COURT: Good afternoon, Counsel.

MR. SWOR: Good afternoon, Your Honor. William Swor on behalf of and with Mr. Toriano Adams.

THE COURT: Good afternoon, Mr. Swor, and good afternoon, Mr. Adams.

All right. Well, today is the date we have set for the sentencing in this case, and let me just explain what's going to happen. So, Mr. Adams, we're going to have a hearing to determine what your sentence should be in this case, and as part of that, we'll go over your presentence report. I'll ask you whether you had a chance to review the report with your lawyer and if you have any objections to it or things that need to be corrected in there. We'll go over with you what your

## SENTENCING

4

1 maximum possible sentence would be in a case like this as well  
2 as what the federal sentencing guidelines are. I'll also go  
3 over with you what the different factors are that the Court has  
4 to consider when it decides what a sentence should be under  
5 federal law because there are certain factors that I have to  
6 consider. I'm going to give your lawyer an opportunity to  
7 address the Court and say whatever he would like to say on your  
8 behalf, and then I'll give you an opportunity to address the  
9 Court as well. Then I'll give the attorneys for the government  
10 the same opportunity. After I hear from everyone, then I'll go  
11 through those same factors that I have to consider and I'll  
12 indicate what the sentence will be. Do you think you  
13 understand what's going to happen?

14 THE DEFENDANT: Yes.

15 THE COURT: All right then. So let me begin by asking  
16 whether you had a chance to go over the presentence report.

17 So, Mr. Swor, did you go over the report with your  
18 client?

19 MR. SWOR: Yes, Your Honor.

20 THE COURT: And do you have any objections or  
21 corrections that you'd like to bring to the Court's attention?

22 MR. SWOR: I believe all outstanding corrections and  
23 objections have been resolved, Your Honor.

24 THE COURT: All right. Thank you.

25 And, Mr. Adams, did you also go over the report?

**SENTENCING**

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Did you see anything in there that was  
3 wrong or needs to be corrected?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: How about on behalf of the government?  
6 Did you go over the presentence report?

7 MR. PARTICKA: We have, Your Honor, and we have no  
8 objections, corrections, or deletions.

9 THE COURT: Thank you very much.

10 So as you no doubt remember, Mr. Adams, you did enter  
11 into a written plea agreement in this case, and under that plea  
12 agreement you agreed to plead guilty and you did plead guilty  
13 on the record to certain offenses, and that included Counts 1  
14 and 2. Count 1 was conspiracy to commit wire fraud. Count 2  
15 was conspiracy to commit money laundering. Then there were a  
16 number of other aggravated identity theft counts, and those  
17 were Counts 17 through 23.

18 So the parties had calculated the guidelines in that  
19 plea agreement and they contemplated them to be between 132 and  
20 159 months. And that was based on the guideline range for  
21 Counts 1 and 2 which was actually 87 or, rather, 108 to 135  
22 months. But then 24 months had to be added to each of those  
23 because your aggravated identity theft counts that you pled  
24 guilty to, those carry a mandatory minimum of two years. So  
25 whatever that guideline range is, you have to add on 24 months

## SENTENCING

6

1 to that, both the bottom and the top.

2 Now, after talking to the attorneys -- I just talked  
3 to them a moment ago in my chambers -- the government and your  
4 attorney both indicated that they believe that the guideline  
5 range here, although you agreed to that higher guideline range,  
6 should actually be smaller and so I did want to place that on  
7 the record. And so let's ask the attorneys for the government  
8 first to address that.

9 MR. PARTICKA: Thank you, Your Honor.

10 The Court is largely correct in that recitation. The  
11 government believes that the number scored in the presentence  
12 report is accurate as to the total loss attributable to the  
13 scheme. However, upon further review of the evidence, the  
14 government is willing to concede as it applies to Mr. Adams  
15 and, frankly, all of the defendants who still need to be  
16 sentenced that a reasonably foreseeable estimate of the loss  
17 that is reasonably foreseeable to each and every individual  
18 defendant is two levels lower and falls within the lower range  
19 in the loss table. So for that reason the government would  
20 believe that the range that applies to Mr. Adams for this  
21 proceeding should be 87 to 108 months on the two substantive --  
22 or on the two conspiracy counts followed by the mandatory 24  
23 months for an overall range of 111 to 132 months.

24 THE COURT: All right. And so in terms of the  
25 different loss amounts, the loss amount that you believe should

## SENTENCING

7

1 be attributable as reasonably foreseeable to Mr. Adams, is that  
2 between 1 million and 3.5 million?

3 MR. PARTICKA: 1.5 million and 3.5 million.

4 THE COURT: 1.5 million and 3.5? And that the amount  
5 attributable to the scheme was how much?

6 MR. PARTICKA: Between 3 and a half million and 9 and  
7 a half million.

8 THE COURT: Okay. So you're saying that in the  
9 original plea agreement the total loss amount was used and  
10 that's why I had that higher guideline range that we just  
11 talked about, but that you believe that what was directly  
12 foreseeable to Mr. Adams was between the 1.5 million and the  
13 3.5 million, and that's why we come up with the total offense  
14 level of 28 instead of 30. And that's why we come up with the  
15 guideline range for Counts 1 and 2, 87 to 108, and if you add  
16 on the 24 months to the 87 and the 24 months to the 208, that's  
17 where you come up to the 111 to 132. Is that correct?

18 MR. PARTICKA: All of that is correct, Your Honor.

19 THE COURT: All right. Do you agree with that,  
20 Mr. Swor?

21 MR. SWOR: Yes, Your Honor. I mean -- yes. For  
22 purposes of this conversation, yes.

23 THE COURT: Okay. Well, the reason that I'm asking  
24 that is that I wanted to ask you, Mr. Swor and Mr. Adams, do  
25 you want me to accept that plea agreement that you entered into

## SENTENCING

8

1 when you pled guilty?

2 MR. SWOR: Yes, Your Honor.

3 THE COURT: And, Mr. Adams, do you agree with that as  
4 well?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Well, I will accept that plea  
7 agreement then with the understanding, however, that the  
8 parties are agreeing that the guideline range that the Court  
9 should apply is actually lower than that guideline range that's  
10 in the plea agreement. And so I will consider myself limited  
11 to the top of that guideline range that the parties have agreed  
12 to even though it's lower than what's in the presentence  
13 report.

14 All right. And so that covers going over what you  
15 pled guilty to and what your maximum possible penalties are at  
16 least with respect to the guidelines. There is a statutory  
17 maximum for that Count 1 and 2 which is up to 20 years as to  
18 Count 1 and 2. Count 1 has a maximum fine of \$250,000, and  
19 Count 2 has a maximum fine of \$500,000. And then those  
20 aggravated identity theft counts, as we already talked about,  
21 they have a mandatory minimum of two years that must be  
22 consecutive to any other sentence, and they have a \$250,000  
23 fine maximum.

24 So, I said before, Mr. Adams, that I have to consider  
25 certain factors and that's because of a federal statute that



**SENTENCING**

1 governs sentencing, and I wanted to make sure you knew what  
2 those factors were that I needed to consider. I have to  
3 consider the nature and circumstances of the crime; in other  
4 words, what kind of a crime it is and all the surrounding facts  
5 about the crime. I have to consider the need for the sentence  
6 to reflect the seriousness of the offense and also promote  
7 respect for law and provide for a just punishment. I also need  
8 to consider a sentence that will afford proper deterrence, and  
9 by deterrence what we mean is discouraging people from  
10 committing crimes. I also have to consider the need to avoid  
11 what we call unwarranted sentencing disparities, and that means  
12 we need to try to treat similarly situated defendants in a  
13 similar way.

14 I also need to consider those sentencing guidelines  
15 that we already mentioned. Those guidelines are not mandatory,  
16 but they are advisory. In other words, the Court must take  
17 them into account, but it is not required that the Court impose  
18 a sentence within those guidelines. But they must be  
19 considered along with all these other factors, as must the  
20 other policies that are in the sentencing guidelines. And so  
21 I'm going to be considering all of these things at the time of  
22 sentencing.

23 There's also the issue of restitution which is  
24 something that the Court has to consider, and particularly in a  
25 case like this, which is a fraud case that does involve a

## SENTENCING

10

1 considerable loss amount as was just discussed a moment ago, I  
2 do have to consider the issue of restitution. That just means  
3 pay the victims back. I did want to go over the amounts that  
4 apply with respect to restitution because although there are  
5 amounts in the presentence report, sometimes these amounts need  
6 to be brought up-to-date because of new information that's been  
7 brought to the attention of the parties, and so let's ask the  
8 government to address that issue of restitution. I know  
9 page 22 of the report does have some restitution amounts, but I  
10 don't know, Mr. Particka or Mr. Chasteen, would you like to  
11 address restitution?

12 MR. PARTICKA: I will, Your Honor. Give me one  
13 moment.

14 Your Honor, the government would submit that the  
15 amounts listed on page 22 of the presentence report are  
16 accurate. It gives a total restitution figure in the amount of  
17 \$2,343,863.50 broken down as follows: \$336,000 to Wal-Mart,  
18 \$1,603,478.80 to AT&T, and \$404,386.70 to American Express.  
19 All of that to be paid jointly and severally with the other  
20 defendants in this case.

21 THE COURT: All right. And that total amount that you  
22 just mentioned, is that in the presentence report too or did  
23 you just add that up?

24 MR. PARTICKA: That total amount I do not believe is  
25 listed in the presentence report, Your Honor. I did take it

## SENTENCING

11

1 from the government's sentencing memorandum, however, when I  
2 did total it prior to filing that document.

3 THE COURT: What is that total again?

4 MR. PARTICKA: \$2,343,683.50.

5 THE COURT: All right. And so, Mr. Swor, do you agree  
6 with that amount with respect to restitution?

7 MR. SWOR: That is the amount in the Rule 11 plea  
8 agreement, Your Honor, and under the calculations in the  
9 agreement that is an accurate calculation.

10 THE COURT: All right. Thank you very much.

11 All right. As I said before then, I will allow the  
12 parties to address the Court. So, Mr. Swor, I'd be happy to  
13 hear from you at this time. I should indicate as well --

14 MR. SWOR: I'm sorry?

15 THE COURT: Just so Mr. Adams knows, so, Mr. Adams,  
16 your attorney filed a detailed sentencing memorandum in this  
17 case that ran more than 20 pages and he also attached a number  
18 of exhibits to that, some legal articles, some letters from  
19 supporters and family of yours and a number of other  
20 attachments and exhibits, and I did read all of that. The  
21 government also prepared a sentencing memorandum that I  
22 reviewed as well. So these are the things that I've reviewed  
23 in addition to the presentence report.

24 Go ahead, Mr. Swor.

25 MR. SWOR: Your Honor, first I'd like to acknowledge

## SENTENCING

12

1 Mr. Adams' family here in the courtroom who are here to show  
2 their support and encouragement and their love for Mr. Adams.  
3 I'd ask the Court to consider the community's love for him  
4 and --

5 THE COURT: Thank you, Mr. Swor, and certainly the  
6 family is welcome, and I do recognize and see that he does have  
7 a large number of individuals here in support of his situation,  
8 and that certainly is something to his credit. So you may  
9 proceed.

10 MR. SWOR: Thank you, Your Honor.

11 I'd like to begin my remarks by addressing and  
12 correcting, if you will, the recommendation in our sentencing  
13 memorandum regarding any length of term of imprisonment of  
14 Mr. Adams. In the sentencing memorandum I requested and  
15 recommended a composite sentence of 70 months. Upon  
16 reflection, I believe that sentence is excessive for at least  
17 two reasons. First and foremost, 70 months is based upon my  
18 review of what I believe the better sentencing guidelines  
19 applicable to the facts of this case. As I hope I made clear  
20 in my sentencing memorandum, I also believe the guidelines no  
21 matter how calculated institutionally result in an excessive  
22 sentence, one that in and of itself produces a sentence that is  
23 more than sufficient and greater than necessary to achieve the  
24 goals of sentencing. I believe a sentence in this case should  
25 be below the guidelines.

## SENTENCING

13

1           Second, a sentence of 70 months would only be 4 months  
2 lower than the sentence imposed upon Aatif Brown who was  
3 involved in this kind of conduct much sooner and on a much  
4 greater scale than Mr. Adams and would be a sentence much  
5 higher than that imposed upon Robert Lodge and Bruce Rembert  
6 who were deeply involved in their own criminal conduct in  
7 addition to and being identified as part of the conspiracy, the  
8 crime that brings Mr. Adams before the Court, but somehow they  
9 were allowed to plead guilty to a much lesser framework and  
10 receive much more lenient sentencing guideline ranges and  
11 sentence recommendations from the government.

12           Finally, Mr. Adams has been on home confinement since  
13 June, 2019. While his performance early on on home confinement  
14 was the subject of litigation and tension, he's learned to  
15 conform his behavior to the Court's requirements, and as  
16 Mr. Harmon in his sentence -- in his memorandum, Mr. Adams is  
17 in compliance with this Court's order. He has, therefore, for  
18 all intents and purposes, continued to be incarcerated although  
19 at home. He will not receive credit from the Bureau of Prisons  
20 for that time. This court can, however, consider that  
21 confinement when fashioning a sentence. Therefore, I now  
22 request that the Court impose a composite sentence of no more  
23 than 60 months.

24           The prosecution's argument for longer custodial  
25 sentence is based upon in large part on the claim that

## SENTENCING

14

1 Mr. Adams' crime is existential. The government claims that  
2 the credit card fraud affects not only the account holders but  
3 all of society. The prosecution argument posits unnamed,  
4 unidentified, and theoretical victims. In the case before the  
5 Court the government has identified only three victims:  
6 Wal-Mart, AmEx, and AT&T. But the government and probation  
7 imposed more -- a more-than-ten-victim enhancement without  
8 identifying any individuals, individual victims, but  
9 referencing the guideline annotation and commentary that allows  
10 this downstream identification or claim of victims which is one  
11 of the arguments for discounting the guidelines that I raised  
12 in my memorandum.

13 The government talks about people who suffered money  
14 damages and must prove they did not, in fact, make the charges  
15 in order to get reimbursed. There's no evidence of that in  
16 this case. Rather than identify individual victims in this  
17 case, we're referenced to a magazine article that talks about,  
18 generally speaking, the systemic problem of credit card fraud  
19 and credit in the society.

20 Again, the government talks about collateral damage to  
21 society and thousands of Michiganders who suffer identity theft  
22 each year. The problem is that has nothing to do with this  
23 case, okay? It is a problem. It's a systemic problem. But  
24 it's a systemic problem that's part of the credit card society  
25 in which we live. You know, it -- and it goes both ways. So

## SENTENCING

15

1 the fact that it's problematic is not the question before the  
2 Court regarding Mr. Adams' sentencing. It's -- in many ways  
3 it's hyperbole, about damaging to society. And all that  
4 hyperbole really does not change the fact that the argument  
5 here is based on numbers, and those numbers come from the  
6 sentencing guidelines which are roundly and soundly criticized  
7 for the fact that the numbers are arbitrary, inconsistent, and  
8 subject to manipulation. As the Court knows, even the American  
9 Bar Association's proposed alternatives to the sentencing  
10 guidelines.

11           You know, it's interesting that the government raises  
12 in its sentencing memorandum the concept of collateral damages  
13 because that was an issue that was part of the debate on the  
14 guideline rules and the guideline calculations, is whether  
15 collateral damages and collateral losses should be included in  
16 the guidelines. Back at the office I came across a 1999 staff  
17 paper on the loss tables, and there was a discussion of the  
18 place of collateral losses and collateral damages in the  
19 guideline calculation, and the decision was mainly collateral  
20 damages is a step too far in calculating guidelines because you  
21 can -- how far out do you want to go in assessing damages. You  
22 know, it -- in civil law it's too far.

23           So you've read and heard my rants about the loss  
24 tables and their, I believe, imperfect and unacceptable place  
25 in the sentencing scheme which brings me back to where we

## SENTENCING

16

1 started, 18 U.S.C. 3553(a) which attempts to create a human  
2 framework for the imposition of sentences which is regularly  
3 undermined by the fact that the guidelines are such a looming  
4 presence, and for judges, for some judges who have never  
5 practiced in a pre-guideline world, they become the dominating  
6 force.

7           The statute says that the guidelines are to be  
8 considered not anything else. The Supreme Court of the United  
9 States instructs that sentencing courts may not presume that  
10 the guideline range is a reasonable sentence. And despite the  
11 Supreme Court says there is no thumb on the scale in favor of a  
12 guideline sentence -- it's *Gall* and *Kimbrough* and *Rita* -- many  
13 courts continue to use the guidelines as a lodestar, and the  
14 government continues to use the guidelines as a loadstar.

15           In this case it -- it's very problematic. This is a  
16 serious offense. We concede that, okay? We concede that this  
17 is a very serious offense. But the fact is the loss that  
18 we've -- my predecessor agreed to, that pretrial services has  
19 determined, that the guidelines accept, that the government  
20 advocates, is a bit of an accounting ledger to make because  
21 when you say loss, what did they really lose? Well, under the  
22 guidelines loss includes -- is the retail price, is the --  
23 which they may or may not use, is the commission which they may  
24 or may not have made. Wal-Mart gets to claim a loss and be a  
25 victim even though AmEx is also a victim, but AmEx approved the



## SENTENCING

17

1 charge to Wal-Mart. So, you know, if we drilled way down, the  
2 question might be is AmEx the victim or is Wal-Mart the victim  
3 because --

4 THE COURT: Okay. Just -- you're not saying there's  
5 double counting going on, right? I think the AmEx loss is  
6 separate from the Wal-Mart loss, but we can address that.

7 MR. SWOR: Well, I mean --

8 THE COURT: I don't think the loss should be counted  
9 twice if that's what's happening here, but I don't think that's  
10 what's happening. But go ahead.

11 MR. SWOR: That is the appearance of what the  
12 guidelines -- and that's the problem with the definition of  
13 loss in the guidelines, is the definition of loss in the  
14 guidelines allows for all of that. The definition of loss in  
15 the guidelines allows for more than ten victims even though  
16 there may be -- because we look at the downstream victims,  
17 okay, who may or may not have lost anything.

18 You know, the example in the government's memorandum,  
19 the initials identified, American Express never made that  
20 person jump through any hoops to dispute that charge. They  
21 would have seen that there was a call-in, their records, so  
22 there wouldn't have been the scenario the government describes  
23 in its sentencing memorandum because that's just not the way  
24 American Express works.

25 So we keep looking at the number. We keep looking at

## SENTENCING

18

1 numbers. We keep looking at numbers. We keep looking at  
2 numbers. And the question is numbers become an accounting  
3 trick. You know, when I was -- I'm getting off track here. My  
4 statistics professor used to say they're lies, they're  
5 ridiculous lies and then there are statistics, and that becomes  
6 the problem with using loss table. And it distracts from the  
7 real question which is what is the harm. Who was harmed? What  
8 was harmed? What was done? What is demonstrable here?  
9 Numbers are demonstrable. They appeared to be objective, but  
10 they're not. A million dollar -- a \$1.3 million or \$2.3  
11 million loss divided between AT&T, Wal-Mart, and American  
12 Express, probably a drop in the bucket, not even something that  
13 they would claim on their tax returns, doesn't affect their  
14 bottom line whatsoever. But \$10,000 from my next-door neighbor  
15 who is on Social Security, who has no other income, that's a  
16 devastating loss. But because the number, we assume the harm  
17 is greater.

18 3553(a) reminds the Court to look at that, reminds the  
19 Court to consider what is the need for the sentence. Why is it  
20 that someone who grew up on the street, who had to learn to get  
21 work at nine years old, who was earning his own money bagging  
22 groceries, who has hustled his entire life, who committed a  
23 crime that is essentially -- it may be thoughtful. It may  
24 be -- it's a crime of opportunity. You learn about it on  
25 YouTube and you execute it, and you execute it better than

## SENTENCING

19

1 other people. I can assure you that Mr. Adams didn't come up  
2 with this scheme by himself. I can assure you that Mr. Adams  
3 did not devise this technique. He just learned how to do it,  
4 and because he's a natural hustler and a hard worker, did it,  
5 for lack of a better term, real well. You know, sometimes it's  
6 not a good idea to be the best.

7 I wish I didn't have my mask on so you could -- so  
8 what is it about what he has done that makes his sentence  
9 worthy -- or makes him worthy of a sentence substantially  
10 greater than the sentence given to the leader of a sex cult who  
11 manipulated and imprisoned people for 20 years in the guise of  
12 improving their lives who received only a 42-month sentence?  
13 What is it about Mr. Adams' conduct that informs the Court that  
14 he should be sentenced to a far greater term of imprisonment  
15 than a man who over a period of six years managed to steal \$126  
16 million in real money not accounting money, real money, from  
17 businesses and charities and was doing it for decades beyond  
18 that six years? He received only a sentence of 48 months. Why  
19 should Mr. Adams be sentenced to a far greater term of  
20 imprisonment than a union official who stole \$1.5 million,  
21 again, in real money, not accounting money from his union  
22 members who received only a 28-month sentence and who was only  
23 ordered to pay back one-third of the money he took?

24 There isn't a good answer. They're all serious  
25 crimes. But what is it about this man that informs the Court,

## SENTENCING

20

1 his history, his activity, is it about him that warrants a  
2 sentence even 70 months, even 60 months? You know, the fact  
3 is -- and please don't take offense, but one fact is he's black  
4 and from the streets; they're all white and from the suburbs.

5 I've said all I'm going to say in my sentencing  
6 memorandum about that. Maybe they had something to trade that  
7 Mr. Adams doesn't have. Maybe they're just older and don't  
8 have much time left on this earth. Maybe because he's younger,  
9 a longer sentence seems like a lesser sentence. I don't know.  
10 But it's just -- it's not needed, okay? Say he's a flawed  
11 human being. It appears to be both obvious and an  
12 understatement. But to suggest that that's the reason to  
13 sentence him to a lengthy term of imprisonment because he's a  
14 hustler is both excessive and unnecessary.

15 His life has shown he's a hard worker. Looking at the  
16 facts of this crime, it's clear he was able to learn, he's  
17 smart, and he was able to apply what he learned.  
18 Unfortunately, in this case he didn't use his super powers for  
19 good. But he's shown what -- that under the right supervision  
20 he can grow and thrive. Look, he was raw. He was undersized  
21 and underskilled. But with the right coaching, he ended up  
22 leading the league, leading the nation in rebounding. He  
23 initially chafed while on bond and under this Court's  
24 supervision and was at risk of going back to pretrial detention  
25 and jail. But with this Court's firm hand, Mr. Harmon's firm

## SENTENCING

21

1 hand and the boundary setting, he's shown that he can comply  
2 with orders and move forward.

3 It's clear that Mr. Adams needs supervision and  
4 direction, but it's also clear that supervision and direction  
5 in Mr. Adams' case are just as effective as a long term of  
6 punishment. A triple-digit term of incarceration is not  
7 necessary in this case. A term of 60 months, 36 months on the  
8 credit card fraud, 24 months on the identity theft, is  
9 sufficient but greater than necessary to fulfill the goals of  
10 sentencing.

11 Thank you, Your Honor.

12 THE COURT: Thank you very much, Mr. Swor.

13 So, Mr. Adams, I'd be happy to hear from you at this  
14 time. And you may come up to the lectern here and you may say  
15 whatever you would like to say on your own behalf.

16 THE DEFENDANT: First, I would just like to apologize  
17 to everyone for the mistakes that I have made and things that  
18 has taken place. I learned a great deal over this period of  
19 time being on home confinement with my family and just seeing  
20 how many people that I'd hurt with making bad decisions. I'm  
21 looking to move forward and bettering myself.

22 THE COURT: All right. Thank you very much, sir.

23 All right. Mr. Particka, on behalf of the government?

24 MR. PARTICKA: Thank you, Your Honor.

25 I want to start off by addressing what for lack of a

## SENTENCING

22

1 better word or amounts to a back door attack on the guidelines  
2 that were agreed to in the Rule 11 plea agreement that this  
3 Court just accepted. I am not asking the Court to hold against  
4 Mr. Adams the argument of his counsel, but I would like to  
5 clarify a few things for the record and for the Court's  
6 understanding.

7           When we speak of ten or more victims, we have ten or  
8 more victims here. It is not simply Wal-Mart and AT&T and AmEx  
9 although those are the three corporate victims left holding the  
10 bag at the end of this. And I will get to the nature of loss  
11 in a moment. But when it comes to additional victims, we have  
12 more than ten subsidiary banks who extended the credit that was  
13 ultimately rolled into those loss numbers that Wal-Mart and  
14 AmEx are left taking a hit on. All of those are corporate  
15 victims.

16           We have more than ten individual victims. Whether or  
17 not the government has unmasked them and provided their  
18 information to the Court or defense counsel or Mr. Adams who  
19 likely has forgotten who any of them are to the extent he did  
20 know their true names at one point, he himself has admitted  
21 that seven of them exist in his plea. There are seven counts  
22 of aggravated identity theft to which Mr. Adams himself pleaded  
23 guilty. Each of those has a last four digits of a credit card  
24 number as an identifier. Each of those credit cards was held  
25 by a real person. Mr. Swor is trying to make this out to be

## SENTENCING

23

1 about accounting and just numbers and what is the harm and the  
2 government couldn't possibly know that people actually suffered  
3 here. Well, Mr. Adams admits that he stole the personal  
4 identifying information of seven people, all seven counts of  
5 aggravated identity theft.

6 His co-conspirators admit to even more victims.  
7 Counts 4 through 23 of the indictment are all aggravated  
8 identity theft. That's 19 real victims. So if we're talking  
9 about ten or more victims, we certainly have them by the  
10 defendant's own admissions within the context of this  
11 conspiracy. That's before we get into any sort of collateral  
12 consequences or numbers or anything else that Mr. Swor might  
13 want to talk about.

14 But let's get into the nature of loss and harm. This  
15 is about numbers. It is about a very, very large amount of  
16 money that Mr. Adams and his co-conspirators stole, in the  
17 millions. And Mr. Swor would like this to be about the  
18 guidelines overstating the harm here, overstating the loss,  
19 this being accounting math, not real math, not real money. The  
20 government has already conceded that the guidelines foreseeable  
21 to Mr. Adams may have overstated what he did and what he is  
22 responsible for, but the restitution number in this case that  
23 he agreed to in his plea agreement is over \$2 million alone.  
24 That's \$2 million in real money. Mr. Swor might say that being  
25 able to count commissions on the part of AT&T is unfair and not

## SENTENCING

24

1 real loss, but it is real loss to that business. For every  
2 phone that was stolen they had to refund a commission back to  
3 Apple who paid them that commission for selling an iPhone.  
4 It's real money, Your Honor. At the end of the day it might be  
5 certainly accounted for and moved between one corporate victim  
6 and another corporate victim and at the end of the day might  
7 not matter very much to Mr. Swor, but it's real money that has  
8 a real impact on the economy.

9 And if we pull that down to a micro level and we talk  
10 about the actual money, let's just talk about October, 2016. I  
11 addressed this in my sentencing memorandum. In the span of  
12 three days Mr. Adams and a number of his co-conspirators  
13 managed to steal \$85,000 in actual money, in the form of gift  
14 cards that they purchased with fraudulent credit cards which  
15 they then liquidated upon their return to Michigan. It's  
16 \$85,000. That's more than the average family makes in an  
17 entire year, and they made it in three days. And then a few  
18 weeks later they did it again, and a few weeks later they did  
19 it in again and again and again and again in different  
20 configurations, in different groups, all across the country,  
21 numerous cities, multiple stores in the span of a year again,  
22 again, again, again. That's how we get to that actual number  
23 of over a million dollars, and that's just what this crew is  
24 willing to acknowledge.

25 From where Wal-Mart sees it and, again, I'm not asking



## SENTENCING

25

1 the Court to hold Mr. Adams accountable for things he and his  
2 co-conspirators did not do, but from where Wal-Mart sits, this  
3 exact scheme, this credit-card-buying-gift-card scheme, has  
4 accounted for \$10 million in losses to the business during this  
5 time frame. Not all of that is attributable to Mr. Adams and  
6 his co-conspirators, but a significant chunk of it is, well  
7 over a million dollars. That's all real money, Your Honor.  
8 It's not just accounting. It is actual money that they stole,  
9 and they should be held accountable for what they acknowledge  
10 in their own plea agreements to having stolen.

11 Next, I'd like to talk about Mr. Adams because  
12 Mr. Swor is right. The Court is directed to consider at  
13 sentencing not only the circumstances of the crime but the  
14 history and characteristics of the defendant. Mr. Swor makes  
15 much of this. He says that Mr. Adams had to learn how to get  
16 work at nine years old. I can't speak to that. What I can  
17 speak to is he did learn to get work. He had to hustle on the  
18 streets. Can't speak to that. What I can speak to is he  
19 hustled on the basketball court and hustled his way through  
20 hard work, grit, and determination for a scholarship and that  
21 scholarship allowed him to earn a bachelor's degree which  
22 already placed him dramatically ahead of most fraud defendants.  
23 Of the vast majority of people who come before this court,  
24 period, he has a bachelor's degree. He knows how to work. He  
25 had a long employment history. Up until recently he continued

## SENTENCING

26

1 to work. And despite all of that, he, nevertheless, chose to  
2 steal a whole lot of money.

3           The internet did not make Mr. Adams do this. He did  
4 not find the devil in the interweb. That is not something that  
5 just happened. Mr. Swor's argument would like this Court to  
6 believe that all of this just sort of happened somehow and  
7 nobody's really at fault and nobody was really harmed. That's  
8 not what's going on. Mr. Adams may have turned to YouTube to  
9 find out how to do this. That might be readily available on  
10 the internet. The Court could do that also. Government  
11 counsel could do that. We could all learn how to do this in  
12 the abstract. But what we don't do is put into practice to  
13 steal real money from the real victims, corporate victims but,  
14 nevertheless, real victims.

15           Finally, one more point, Your Honor, as to Mr. Adams'  
16 role. Mr. Swor would ask what makes Mr. Adams different than  
17 anyone else in this scheme, and to that the government would  
18 note that Mr. Adams had a hand in literally every phase and  
19 iteration of this scheme. He was actively involved in the  
20 initial run of the Wal-Mart fraud. He was very actively  
21 involved in the transitional fraud involving AmEx and  
22 Co-Defendant Tayan Jackson calling to clear fraud stops on  
23 lines. Mr. Adams was very involved in that, and he was  
24 actively involved in the AT&T fraud that was the final phase of  
25 this scheme. Not as involved as some defendants but actively

## SENTENCING

27

1 involved. He played a role at all stages of this scheme.

2 My final point, Your Honor, to address counsel's  
3 argument about what makes Mr. Adams any more deserving of a  
4 significant sentence than a number of individuals that Mr. Swor  
5 pulled from the docket sheet. Two points. One, those cases  
6 are not before this Court. The Court is not aware of the  
7 things that were considered at that time by those courts.

8 But the second broader point is if anyone were to make  
9 an argument for why the guidelines matter and why sentencing  
10 inside the guidelines matters, Mr. Swor just did. He can ask  
11 any number of hypothetical questions about why defendant X or Y  
12 or Z was entitled to downward departure A or B or C, and it may  
13 not seem in either to make sense. I would venture that some  
14 number of the defendants in Mr. Swor's voluminous exhibit  
15 received downward departures from the guidelines. Those are  
16 incredibly hard to discern on the back end. There are reasons.  
17 There are reasons that are not known outside the courtroom.  
18 There are reasons that are only ever known to the parties and  
19 the Court for each and every single one of those sentences,  
20 whether it's departure or not.

21 If we are talking about consistency, that's why the  
22 guidelines exist. Mr. Swor can quibble about whether or not  
23 they overstate culpability for any fraud offense. They may.  
24 But they are the system that we have, and the more frequently  
25 judges sentence within that system the greater degree of

## SENTENCING

28

1 consistency we will have in sentencing. It is ultimately for  
2 this Court to decide whether or not a sentence within the  
3 guidelines is appropriate here. I'm not going to try to defend  
4 the guideline system as a whole as I stand here. Within the  
5 context of the case, however, the government believes the  
6 guidelines are accurate and that Mr. Adams' specific conduct  
7 and ongoing involvement for every phase of this scheme merits a  
8 sentence at the top of his guidelines. For all those reasons,  
9 Your Honor, we would ask for that sentence. Thank you.

10 THE COURT: All right. Well, thank you very much,  
11 Mr. Particka.

12 And so I do need to consider all of those factors that  
13 I've previously mentioned here. So I'm going to go through  
14 them now. The parties have already discussed the sentencing  
15 guidelines that apply, so I won't do that until I get to that  
16 part of the factors that I need to consider.

17 The first factor I need to consider is the nature and  
18 circumstances of the offense. And so both sides here have  
19 acknowledged that this is an extremely serious offense. This  
20 is a large-scale retail fraud organization that was nationwide  
21 in scope and operated over several years. It involved the  
22 manufacture of cloned credit cards using stolen personal  
23 identity information from hundreds of victims, and this enabled  
24 the defendants to make fraudulent credit cards and then go to  
25 Wal-Marts around the country. According to the presentence

## SENTENCING

29

1 report and the indictment, Mr. Adams himself traveled to, from  
2 what I can count here, five states initially and then two more  
3 states, so seven states in order to effectuate this scheme, and  
4 the other defendants traveled to as many as over 30 states.  
5 And so the scheme was quite far reaching in its scope.

6 The initial scheme involved traveling to Wal-Marts, as  
7 I say, in a number of different states, and the presentence  
8 report includes the different transactions that are also  
9 referenced in the indictment where Mr. Adams would travel to  
10 the Wal-Mart usually with one of the other defendants, and some  
11 of them were in Virginia, Pennsylvania, in Missouri and Kansas,  
12 in North Carolina and later in Arkansas as well. And the  
13 report specifically mentions, for instance, September of 2017  
14 when Mr. Adams was working with one of the other co-defendants,  
15 two of the other co-defendants, that they were specifically  
16 using American Express credit cards, and in some cases the  
17 victims who were the real owners of these cards attempted to  
18 deactivate them. And through the effective I guess you might  
19 call it social engineering or the talking that the defendants  
20 were able to do, they got American Express to reactivate them  
21 after they had been deactivated. And I realize that that's not  
22 entirely clear with respect to how many times this happened or  
23 how many individuals, but it does show to me the cynicism  
24 involved in this kind of a crime and the dishonesty. Just the  
25 real base level of dishonesty involved if you have victims

## SENTENCING

30

1 calling to try to deactivate their card because they know  
2 someone has used it fraudulently and then that's coming up on  
3 their credit card for the defendants to then turn around and  
4 convince the credit card company to reactivate it. It just  
5 speaks to the nature of the crime here, the nature of the crime  
6 being pretty serious with respect to disrespect for law. And  
7 that's just the credit card aspect of this.

8           There's also the iPhone scam that went on from 2017 to  
9 2018, and that also involved a fairly sophisticated scheme  
10 where the defendants would, using personal identity information  
11 that was stolen, they would open new service accounts on  
12 existing customer accounts and then cause those accounts to  
13 purchase iPhones and then they would obtain the iPhones and  
14 resell the iPhones. In this case it involved some 1,495  
15 separate iPhones. That's a lot of cell phones to sell. That's  
16 where it comes up with another \$1.4 million in loss.

17           I don't really think there's any debate about the  
18 number of victims here, or it's clear that it's more than ten.  
19 It's a lot more than ten. I don't really think that that's at  
20 issue.

21           The parties have agreed that the property offense  
22 level here in terms of the guidelines should be 28 instead of  
23 30. That is lower than the parties had calculated at the time  
24 of the plea, and it does result in a lower range. As I talked  
25 about before, that range is between 87 and 108 months for

## SENTENCING

31

1 Counts 1 and 2 but then you have to add on the 24 months for  
2 aggravated identity theft, and that's how we get to the range  
3 of 111 to 132 months. The top of that range, 132 months, is  
4 essentially 11 years. The bottom is about nine years. It's a  
5 little more than nine years, but that's the range that we're  
6 talking about that applies here which is a very high range.  
7 Now, that range is not mandatory, as I mentioned before. It's  
8 an advisory range that the Court has to consider, but the Court  
9 is not required to sentence within that range.

10 I do need to consider the defendant's personal  
11 characteristics and history as well including if he has any  
12 criminal history. In this case he does have a criminal  
13 history. It's not a particularly serious criminal history, but  
14 in looking at it, really from the time he was 19 he had a  
15 number of -- what you might call a number of petty offenses,  
16 driving without a license and other such offenses. He does  
17 have two of these offenses that occurred when he was 21 and 23,  
18 in 2007 and 2009, both of which he used a false name when he  
19 was arrested by the officer, and that's a matter of some  
20 concern, but the offenses themselves are not particularly  
21 serious. In 2016, when he was 31, he did have a possession of  
22 a weapon charge that occurred at the airport, but it wasn't --  
23 it did not have a significant penalty associated with it. He  
24 did have in 2017 a financial transaction device fraud case  
25 which he got \$435 fine for. I know Mr. Swor includes

## SENTENCING

32

1 surrounding circumstances of that which he says are mitigating,  
2 and that may be true. I don't really know exactly what there,  
3 but it is part of his criminal history. And the fact that he  
4 did not receive any significant penalty for that I think speaks  
5 to the fact that he did not take this kind of credit card  
6 fraud, you know, seriously. This happened in 2017. That was  
7 the same -- overlapping with the time frame when he was  
8 conducting this much more extensive fraud scheme.

9 I do have to consider Mr. Adams' personal background  
10 as well, that he was raised by his mother, that he did have --  
11 had a loving family. Considered his father to be his best  
12 friend although his father wasn't particularly involved in his  
13 upbringing. He indicates that essentially he had a life where  
14 his basic needs were met. He has a supportive family. I note  
15 that several of his family members are here today, and that is  
16 testimony to the support and love that he has from among his  
17 family members.

18 He does have four children. He is currently married.  
19 He has -- the four children are not from the woman he's married  
20 to, but there is evidence in the record that he is recognized  
21 to be supportive of his children and of their mothers.

22 He has some history of drug abuse involving Percocets  
23 but not a serious drug problem.

24 With respect to his education, Mr. Adams has a good  
25 record of education, and a record that's something that is



## SENTENCING

33

1 definitely to his credit. It was mentioned by both Mr. Swor  
2 and by Mr. Particka that Mr. Adams was able to get a basketball  
3 scholarship. He attended a number of different colleges,  
4 community colleges as well as Mississippi Valley State down in  
5 Mississippi, and then eventually got his degree from Lindenwood  
6 University where he did receive a basketball scholarship in  
7 St. Charles, Missouri, and he received a bachelor's degree in  
8 criminal justice.

9 He has some employment as well but not a -- but not an  
10 extensive employment record. And so those are the factors that  
11 I look at in terms of Mr. Adams' background in the case, and I  
12 think his background is one that suggests that he could have  
13 gone in a different route than where he did, and it's somewhat  
14 of a tragedy that he didn't follow the opportunities he had and  
15 instead used the gifts that he has in terms of his abilities,  
16 his leadership, his financial ability to pursue a scheme like  
17 this instead of possibly trying to get involved in criminal  
18 justice or doing the kinds of things I think that even based on  
19 his own statements today I think he realizes were the kinds of  
20 things that he should have done.

21 I do have to consider the need to impose a sentence  
22 that will have sufficient deterrence. I think the deterrence  
23 is important here, and I did listen while Mr. Swor was talking  
24 about other fraud cases where individuals may have received  
25 sentences that were lower than the guideline range here, and it

## SENTENCING

34

1 is true that I can't really consider those cases or speak to  
2 those cases because each case needs to be considered on its own  
3 facts and based on the circumstances in that case. And I don't  
4 know what happened in those cases. If anything, from the way  
5 Mr. Swor described them, it sounded like some of those  
6 defendants should have received higher sentences than what they  
7 received from the way he described those cases, but I don't  
8 know enough about those cases.

9 I do think that a scheme like this is one that must  
10 have a significant custody sentence associated with it because  
11 of the seriousness of the crime. By that I mean a crime that  
12 stretched across the entire country, a crime that involved in  
13 terms of the scheme up to \$10 million, and as to this one  
14 defendant, over a million dollars. And so this is not a small  
15 crime. This is a very big crime, and so deterrence is a  
16 significant factor that I need to consider.

17 In terms of protecting the public from other crimes by  
18 the defendant, I don't know whether that factor is so  
19 important. I think that, as we've seen, Mr. Adams has been  
20 under supervision for some time now during the time while this  
21 case has been pending. He's had a few problems but nothing  
22 that suggests that he would get reinvolved in criminal  
23 activity.

24 I do need to consider the need to avoid unwarranted  
25 sentencing disparities. We've had one other defendant who was

## SENTENCING

35

1 sentenced in this case who received an overall sentence of 96  
2 months which is about eight years, and so in comparing the  
3 activity of that defendant to the activity of this defendant, I  
4 think there are some comparabilities that need to be  
5 considered. Both of them were involved in much of the same  
6 parts of this scheme. At the same time I think that there are  
7 positive factors that exist in the record here regarding  
8 Mr. Adams. Some of it I've alluded to. And that is his -- the  
9 education that he's had. His personal history that shows that  
10 he has overcome a lot of difficult circumstances that many  
11 people would not have been able to overcome.

12 The government is suggesting that a sentence at the  
13 very top of the guideline range should be imposed here, and  
14 that would be I think much greater than necessary to accomplish  
15 all of these factors that I've just gone over here. The  
16 alternative that Mr. Swor is suggesting of total sentence of 60  
17 months, that I think is too small. I think that that sentence  
18 would not be sufficient here, not when we can see that, as I  
19 mentioned a moment ago, that the other defendant received a  
20 significantly greater sentence.

21 So overall I believe that a sentence on Counts 1 and 2  
22 of 60 months would be sufficient and not greater than necessary  
23 to accomplish the goals of sentencing, and then that would be  
24 followed by a sentence of 24 months on the other aggravated  
25 identity theft counts. So that is the sentence that I intend

## SENTENCING

36

1 to impose. Before I do so, I want to ask the parties if they  
2 want to place any objections on the record.

3 MR. PARTICKA: Nothing for the government, Your Honor.

4 MR. SWOR: There are no legal impediments to the Court  
5 imposing sentence.

6 THE COURT: I'm sorry. I couldn't hear you, Mr. Swor.

7 MR. SWOR: I'm sorry, Your Honor. There are no legal  
8 impediments to the Court imposing sentence.

9 THE COURT: All right. Thank you very much.

10 So pursuant to the Sentencing Reform Act of 1984, the  
11 Court, considering the sentencing guidelines and factors  
12 contained in 18 U.S. Code Section 3553(a), hereby commits the  
13 defendant to the custody of U.S. Bureau of Prisons for a term  
14 of 60 months on Counts 1 and 2 to run concurrently and 24  
15 months on Counts 17 through 23 to run concurrently to each  
16 other and consecutive to Counts 1 and 2. That would be for a  
17 total sentence of 84 months.

18 Upon release from imprisonment, the defendant shall be  
19 placed on supervised release for a term of three years on  
20 Counts 1 and 2 and one year on Counts 17 through 23. All  
21 counts shall run concurrently. It is further ordered that the  
22 defendant shall pay a special assessment of \$100 on each count  
23 for a total of \$900 which will be due immediately. The Court  
24 waives imposition of a fine, costs of incarceration and cost of  
25 supervision due to defendant's lack of financial resources.

## SENTENCING

37

1           It is further ordered that the defendant shall pay  
2       restitution payable to the clerk of the court for disbursement  
3       to the victims identified as Wal-Mart in the amount of  
4       \$336,000, to AT&T in the amount of \$1,603,476.80, and to  
5       American Express in the amount of \$404,386.70. Restitution  
6       shall be ordered joint and several with all co-defendants and  
7       interest shall not accrue.

8           While in custody the defendant shall participate in  
9       the Inmate Financial Responsibility Program or IFRP. The Court  
10      is aware of the requirements of this program and approves the  
11      payment schedules of this program and hereby orders the  
12      defendant to participate in that.

13          I will order mandatory drug testing.

14          Pursuant to 34 U.S. Code Section 40702, the defendant  
15      shall cooperate with the collection of a DNA sample as directed  
16      by the probation officer.

17          While on supervision, the defendant shall abide by the  
18      standard conditions as adopted by the U.S. District Court for  
19      the Eastern District of Michigan and shall comply with the  
20      following special conditions. Due to the type of the instant  
21      offense, the following special conditions are ordered. Number  
22      one, Mr. Adams, you must participate in a cognitive behavior  
23      treatment program and follow the rules and regulations of that  
24      program. The probation officer will supervise your  
25      participation in the program including all of the aspects of

## SENTENCING

38

1 the program such as the provider, location, modality, duration,  
2 intensity, et cetera. Such programs may include group sessions  
3 led by a counselor or participation in a program administered  
4 by the probation office.

5 You must also submit your person, property, house,  
6 residence, vehicle, papers, computers as defined under 18 U.S.  
7 Code Section 1030(e)(1) or any electronic communications or  
8 data storage devices or media or office to a search conducted  
9 by a U.S. probation officer. Failure to submit to such a  
10 search may be grounds for revocation of release. You must warn  
11 any other occupants that the premises where you are may be  
12 subject to a search pursuant to this condition.

13 Number three, you must submit your computers as  
14 defined previously or any electronic communications or data  
15 storage to a search.

16 Based on your past prescription pill use, the  
17 following special conditions are ordered. Number four, you  
18 must submit to substance abuse testing to determine if you have  
19 used a prohibited substance.

20 Number five, if necessary, you must participate in a  
21 substance abuse treatment program and follow the rules and  
22 regulations of that program. Probation officer will also  
23 determine your participation and your treatment provider and  
24 the location, modality, et cetera of this program.

25 Due to the pending order of restitution, the following

## SENTENCING

39

1 special conditions are ordered. Number six, if the judgment  
2 imposes a financial penalty, you must pay the financial penalty  
3 in accordance with the schedule of payments with the judgment.  
4 You must also notify the court of any changes in economic  
5 circumstances that might affect your ability to pay this  
6 financial penalty.

7 Number seven, you must provide the probation officer  
8 with access to any requested financial information and  
9 authorize the release of any financial information. The  
10 probation officer will share any financial information it  
11 receives with the U.S. Attorney's Office if requested.

12 Number eight, you must not incur any new credit card  
13 charges or open any lines of credit without the approval of the  
14 probation officer.

15 Counts 3, 4, and 11 through 16 of the indictment it's  
16 my understanding are being sought to be dismissed. Is that  
17 correct?

18 MR. PARTICKA: Your Honor, I do not believe that  
19 Mr. Adams is charged in those counts. The counts that  
20 Mr. Adams is charged in are the counts that he pled to.

21 THE COURT: All right. So it may be that those counts  
22 are already dismissed. If he is charged in those counts, then  
23 we will have them dismissed.

24 MR. PARTICKA: Correct.

25 THE COURT: All right. Is there anything further?

## SENTENCING

40

1 Does either party wish to place any objections on the record?

2 MR. PARTICKA: Not for the government, Your Honor.

3 MR. SWOR: Your Honor, not with regard to the judgment  
4 itself.

5 THE COURT: All right. Thank you.

6 So, Mr. Adams, your plea agreement contained what we  
7 call a waiver of your appellate rights, and what that indicated  
8 was that as long as any sentence that was imposed was no  
9 greater than what the plea agreement required, then you would  
10 be giving up your right to appeal. Now, in this case, as we've  
11 been talking about it here, the plea agreement had a much  
12 higher guideline range in it. That was the maximum I could  
13 impose in the sentence that was just imposed in court. And so  
14 it's likely that if you tried to appeal, you would not be able  
15 to do so under that waiver because you gave up your right to  
16 appeal under that plea agreement as long as the sentence was  
17 within that.

18 Now, if for some reason you think you do have some  
19 basis for an appeal, you would need to do so within 14 days of  
20 the date that the written judgment is issued. Do you  
21 understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Is there anything further that  
24 we need to address?

25 MR. SWOR: Your Honor, first of all, initially, we



## SENTENCING

41

1 would ask the Court to allow Mr. Adams to remain on bond and to  
2 voluntarily surrender to the designated institution.

3 THE COURT: Any objection?

4 MR. PARTICKA: We don't have any objection to that,  
5 Your Honor.

6 THE COURT: All right. I will then continue bond in  
7 this case, Mr. Adams, and I will allow you to report  
8 voluntarily.

9 THE DEFENDANT: Thank you.

10 THE COURT: So what that means, you'll get a  
11 notification from the Bureau of Prisons telling you where  
12 you're supposed to report to serve your sentence. I haven't  
13 made any recommendation as to that.

14 I don't know, Mr. Swor, would you like the Court to  
15 make any recommendation as to where he should serve his  
16 sentence?

17 MR. SWOR: Your Honor, we would ask the Court to  
18 recommend to the Bureau of Prisons that Mr. Adams be housed at  
19 FCI Milan or, if that is not available, the next closest  
20 facility consistent with his classification, security  
21 classification, closest to his family so that he can maintain  
22 familial ties, also that -- a facility that has a residential  
23 drug abuse program that he can participate in and recommend  
24 that he participate in.

25 THE COURT: All right. Well, I do recommend that

## SENTENCING

42

1 Mr. Adams be allowed to serve his sentence at FCI Milan or the  
2 next closest federal correctional institution. If he is  
3 eligible for the RDAP program, then I recommend that as well as  
4 a drug treatment program that's available in our prison system.

5 All right. Anything further?

6 MR. SWOR: Finally, Your Honor, Mr. Adams is currently  
7 on unsecured bond with the condition of home confinement. We  
8 would ask that the Court remove the condition of home  
9 confinement. He is currently on a GPS tether. We believe that  
10 is sufficient security for his behavior and appearance. It's  
11 six, eight weeks, allow him to have some time with his family  
12 before he begins what is an extensive sentence.

13 THE COURT: What's the government's --

14 MR. SWOR: I believe he's demonstrated at least in  
15 this last year that he can comply with the Court's order and  
16 that he can comply with the conditions of supervision.

17 THE COURT: What's the government's position?

18 MR. PARTICKA: Your Honor, pretrial services, as I  
19 understand it, has recommended that Mr. Adams' conditions  
20 continue as they are. The government would join in that  
21 recommendation.

22 THE COURT: Mr. Swor, do you know why the -- or I  
23 guess what makes you say that you believe that he should have  
24 this condition removed if pretrial is against it?

25 MR. SWOR: Your Honor, Mr. Adams has demonstrated that

## SENTENCING

43

1 he can be responsible, responsive, and follow the rules.  
2 Currently he is in a -- essentially -- not even essentially.  
3 He's in a custodial sentence, and the fact of the matter is is  
4 that all of his violations since being placed on this custodial  
5 sentence has been because there's this inherent tension between  
6 being on bond and being confined. Pretrial services views this  
7 as being in jail, okay? And, therefore, it views it as being  
8 the most restrictive as opposed to being on bond with  
9 supervision. And I think that's the problem and the tension,  
10 and that's where we've had problems, is that it's -- there's a  
11 dichotomy there. And I believe pretrial services views itself  
12 as a custodial officer as opposed to a supervising officer.  
13 And I believe that Mr. Adams has demonstrated that he can  
14 function under supervision as opposed to in custody. You know,  
15 he's not gotten credit for being in custody, but he's certainly  
16 not had the freedom of being on bond.

17 THE COURT: Well, the key I think at this point is  
18 that Mr. Adams is still subject to a tether; is that correct?

19 MR. SWOR: Yes, Your Honor.

20 THE COURT: All right. Well, I will allow his bond to  
21 be amended to allow him to not have the home confinement, but  
22 he has to stay on the tether, and -- but I will indicate, you  
23 know, Mr. Adams, you didn't get a very good report, all right?  
24 So you had some problems with your pretrial services officer.

25 THE DEFENDANT: Yeah.

## SENTENCING

44

1           THE COURT: And if you get any reports of a problem,  
2 then you're just going to not only be in home confinement, but  
3 I'm just going to revoke your bond and we'll just put you in  
4 detention until it's time for you to report. Do you understand  
5 that?

6           THE DEFENDANT: Yes, Your Honor.

7           THE COURT: And so you're basically on a very short  
8 tether here with respect to being allowed to not be on home  
9 confinement. And so if I get any reports, then it's really not  
10 going to be an issue; we are just going to revoke your bond and  
11 put you in detention. Okay?

12          THE DEFENDANT: Thank you, Your Honor.

13          THE COURT: Yes, Mr. Particka.

14          MR. PARTICKA: Your Honor, if I can seek clarification  
15 of that last amendment of conditions. Is it the Court's  
16 intention that Mr. Adams be on a tether with curfew? Is the  
17 Court deferring to pretrial services as to hours? What would  
18 the Court like in terms of Mr. Adams' supervision? Just so the  
19 record is clear.

20          THE COURT: I think that the probation department  
21 should determine whether there should be a curfew or not after  
22 conferring with Mr. Adams and Mr. Swor.

23          MR. SWOR: Pretrial services?

24          THE COURT: Whoever is currently supervising during  
25 this period in between.

## SENTENCING

45

1 MR. PARTICKA: I believe it may actually be the  
2 probation department during this time.

3 MR. BELLAMY: Your Honor, Kody Bellamy on behalf of  
4 the probation department. Mr. Clifford of pretrial services  
5 will actually continue to supervise Mr. Adams until he reports.

6 MR. PARTICKA: Understood. Thank you.

7 THE COURT: All right. Very good.

8 All right. Is there anything further that we need to  
9 address?

10 MR. SWOR: Nothing further, Your Honor, finally.

11 MR. PARTICKA: No, Your Honor. Thank you.

12 THE COURT: All right. Thank you very much. Then we  
13 can be adjourned in this matter. And good luck to you,  
14 Mr. Adams.

15 THE DEFENDANT: Thank you.

16 MR. SWOR: Thank you, Your Honor.

17 THE COURT CLERK: Please rise. Court is in recess.

18 (Proceedings concluded, 3:52 p.m.)

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## SENTENCING

46

## CERTIFICATION OF REPORTER

I, Leann S. Lizza, do hereby certify that the above-entitled matter was taken before me at the time and place hereinbefore set forth; that the proceedings were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party, nor interested in the event of this cause.

S/Leann S. Lizza 1-27-2022

Leann S. Lizza, CSR-3746, RPR, CRR, RMR, RDR Date